IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1429 OF 2005

Prafullakumar Lahu Nadkar. ... Applicant.
Versus.
State of Maharashtra & another. ... Respondents.

CRIMINAL APPLICATION NO. 1430 of 2005

Sandeep D.Bhogulkar. ... Applicant.
Versus.
State of Maharashtra & another. ... Respondents.

AND

CRIMINAL APPLICATION NO. 1431 OF 2005

Sanjiv Gajanan Ghag. ... Applicant.
Versus.
State of Maharashtra & anr. ... Respondents.

Shri P.M.Pradhan for the Applicants.

Shri R.B.Mokashi, Spl.P.P. with Shri A.S.Gadkari, A.P.P.
for the Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 16th June, 2005.

P.C.:

1. Though these Applications can be disposed of in view statements which are made in the affidavits tendered today, it is necessary to set out few facts as these applications have remained pending in this Court for a long time.

2. The Applicants herein filed applications for anticipatory bail as they apprehended arrest as a

consequence of C.R.No.272 of 2004 which was registered on the basis of a statement of by Dr.Matin recorded by the Special Judge. The offence is regarding death of one Khwaja Yunus who was an accused in Ghatkopar Bombay Blast case. The learned Additional Sessions Judge, Mumbai, rejected the Applications by a common order. The learned Judge observed that the apprehension of the Applicants that they would be arrested in the said crime was not reasonable and well founded. The learned Judge while dealing with the prayer made by the learned Counsel appearing for the Applicants before him that a direction may be given to the State C.I.D. to give the Applicants 72 hours notice before the Applicants or any of them is to be arrested, the learned Judge observed that no fetter can be put on the power of the police to arrest a person who is involved in a commission of a cognizable offence.

3. After these applications were filed, the same were placed before this Court on 4th March 2005. On that day ad-interim protection was granted in favour of the Applicants which was later on extended till 14th March 2005. On 18th March 2005, the learned A.P.P. appearing for the State sought time to file reply. This Court, therefore, granted time till 23rd March 2005. This Court recorded in the order that the learned A.P.P. stated that so far no summons has been issued to the Applicants nor they are arraigned as Accused in the said

C.R. Accordingly a common affidavit dated 22nd March 2005 of P.H.Chougule, P.I. attached to the State C.I.D., Konkan Bhavan, Navi Mumbai was filed. In the said affidavit the factual details leading to the registration of the C.R. were stated. It is further stated in the affidavit that the Applicants attended the office of the State C.I.D. at Konkan Bhavan on 9th February and 10th February 2005. The Investigating Officer being busy in investigation called the Applicants on 11th February 2005. But thereafter the Applicants avoided attending the C.I.D. office and have taken recourse to filing applications for anticipatory bail in the Sessions Court. It was prayed in the said affidavit that the Applications filed by the Applicants in this Court may be summarily rejected. On 28th March 2005 time was granted to the Applicants to file rejoinder. Accordingly separate affidavits-in-rejoinder are filed in all the three applications by the Applicants. It was pointed out in the rejoinder that the Applicants remained present in the office of the State C.I.D. on 27th March 2005 and answered all the queries. A copy of the letter dated 27th March 2005 signed by the Applicants and others addressed to the Superintendent of Police, State C.I.D. was annexed to the affidavit in which a request was made to record that the Applicants and others attended the office for the purpose of inquiry.

4. On 16th April 2005, the Deputy Superintendent of Police, C.I.D. Crime Branch, Nashik, Shri S.W.Kale submitted an application addressed to this Court stating therein that a copy of the rejoinder filed in Application No.1429 of 2005 was not received from the Court and therefore, affidavit in respect of the said rejoinder has not been prepared for submission. By the said application he sought time. In the meanwhile these Applications appeared on Board on 31st March 2005 and this Court noted that on instructions of Shri S.W.Kale, the Deputy Superintendent of Police, time was sought by the learned A.P.P. to take instructions and the Applications were adjourned to 19th April 2005. On 20th April 2004 Shri Kale, Deputy Superintendent of Police, submitted an Application addressed to the Registrar of this Court making a grievance that a copy of the affidavit-in-rejoinder of the Applicant in the first application was not made available to him.

5. In Criminal Application No.1430 of 2005 an affidavit dated 16th April 2005 filed by Shri Kale is on record.

In the said affidavit in paragraph 3 it is stated thus:

> "3. The applicant has conveniently glossed over his non-attendance at the C.I.D.Office, Konkan Bhavan, Navi Mumbai, on 11.02.2005, 14.02.2005, 18.02.2005, 20.02.2005, although he had been instructed by his superiors to do so; he

proceeded on sick leave from 20.02.2005 to 21.03.2005. He was again called for investigation at above place on 23.02.2005, 01.03.2005 and 07.03.2005. However, he failed to attend on these dates. **This behaviour clearly shows his attitude of non co-operation with the Investigating Agency.**" (Emphasis supplied)

In paragraph 12 he stated as under:

"12. **I say that the custody of the applicant is very much necessary in the present case to find out how and why they handed over the custody of the accused/deceased Khwaja Yunus to Shri Bhosale Police Inspector and his team of Ghatkopar C.I.U.** I say that it was the duty of the applicant to escort and remain with the accused Khwaja Yunus since he was arrested in one of the sensational Bomb Blast case." (Emphasis supplied).

He also asserted that the Applicants in the said Application have not given correct information about the case. In the said affidavit it was asserted that the custody of the Applicant in the said Application was very much necessary for the purpose of interrogation and investigation in the present case. From the records, it appears that no such affidavit is filed in other two applications.

6. All the three applications were placed before this Court on 2nd May 2005. In the order passed on that day this Court noted that a request was made to grant a short time for engaging a Special Public Prosecutor. This Court noted that from time to time this Court asked the learned A.P.P. whether any specific orders are required to be passed asking the Applicants to report to the concerned Police Officer for interrogation and investigation and the same was declined on instructions from the concerned Officer. On that day time was granted till 6th June 2005 as a last chance. This Court recorded that the learned A.P.P. on instructions from Shri S.K.Padvi, Superintendent of Police (Crime) stated that the State has not decided to arrest the Applicants as accused in the case. The order dated 2nd May 2005 is a common order passed in all the three Applications and it appears that the affidavit filed by the Deputy Superintendent of Police Shri Kale on 16th April 2005 in Criminal Application No.1430 of 2005 setting out need for custodial interrogation of the Applicant in the said Application was not brought to the notice of this Court. On 6th June 2005, when the Applications were called out before this Court again a request was made by the learned A.P.P. for adjournment and accordingly the matters were adjourned to 13th June 2005 as last chance.

7. On 13th June 2005 an affidavit of Shri S.W.Kale,

Deputy Superintendent of Police affirmed on 21st April 2005 in Application No.1429 of 2005 was placed on record in which same assertions which are made in earlier affidavit filed in Criminal Application No.1430 of 2005 were made as regards the Applicant in Criminal Application No.1429 of 2005 and it was asserted that custody of the Applicant in this Application was very much necessary. When this Court found that the affidavit dated 21st April 2005 did not see the light of the day till 13th June 2005 and there was apparent inconsistency in the stand taken before the Court on 2nd May 2005 by Shri S.K.Padvi, Superintendent of Police (Crime) and the stand taken in the affidavit dated 21st April 2005, both the Officers were directed to submit explanation in the form of affidavits. Accordingly today both of them have tendered separate affidavits. In paragraphs 3 and 4 of the affidavit of Shri S.K.Padvi, Superintendent of Police, it is stated thus:

> "3. I say that thereafter a detailed investigation and probe in the said matter was being carried out and it was decided to defer the arrest of the said applicants and collect further evidence in the matter against them so as to bring home the guilt of the accused without any reasonable doubt and not to give any chance or an opportunity to the said applicants to make an unnecessary hue and cry

in the matter. I say that in the light of the said strategy it was decided not to press for the custody of the said applicants and accordingly the statement was made before this Hon'ble Court by me through the learned A.P.P. I say that the statement made was in developments which had transpired post the drafting and swearing of the said affidavit dt.21st April 2005. I also say that the said affidavit which was drafted and affirmed had been presented to the office of the Public Porsecutor, to be submitted to the Hon'ble Court, however I cannot assign any reasons as to why the said affidavit was not tendered to this Hon'ble Court earlier and why the same remained in the brief until 13th June 2005 when the same was tendered by the Spl.P.P. I say that in any event it was a true attempt to place the true and correct records on the file of this Hon'ble Court and not conceal any material from this Hon'ble Court or mislead the Hon'ble Court on the factual aspects of the case.

4. I say that every day in the course of investigation of the case new things are surfacing which are being scrutinized and examined and the role of the concerned

witnesses/accused persons is under probe. I also say that all efforts are being made to call the original complainant as he has been acquitted from the Bomb Blast case to identify the present applicant."

In the affidavit of Shri Kale, Dy.Superintendent of Police in paragraphs 3 and 4 it is stated thus:

"3. I say that thereafter a detailed investigation and probe in the said matter was being carried out and it was decided to defer the arrest of the said applicants and collect further evidence in the matter against them so as to bring home the guilt of the accused without any reasonable doubt not to give any chance or an opportunity to the said applicants to make an unnecessary hue and cry in the matter. I say that in light of the said strategy it was decided not to press for the custody of the said applicants and accordingly the statement was made before this Hon'ble Court by the S.P.Crime Mr.Suresh Padavi through the Ld.A.P.P. I say that the statement made by Mr.S.K.Padvi was made in developments which had transpired post the drafting and swearing of the said affidavit dt.21st April 2005. I also say that the said affidavit which was drafted

and affirmed had been presented to the office of the Public Prosecutor, to be submitted to the Hon'ble Court, however, I cannot assign any reasons as to why the said affidavit was not tendered to this Hon'ble Court earlier and why the same remained in the brief until 13th June 2005 when the same was tendered by the Spl.P.P. I say that in any event it was a true attempt to place the true and correct records on the file of this Hon'ble Court and not conceal any material from this Hon'ble Court or mislead the Hon'ble Court on the factual aspects of the case.

4. I say that every day in the course of investigation of the case new things are surfacing which are being scrutinized and examined and the role of the concerned/witnesses/accused persons is under probe. I also say that all efforts are being made to call the original complainant as he has been acquitted from the Bomb Blast case to identify the present applicant."

7. The learned Special Public Prosecutor on instructions of both the officers who are present in Court stated that both the Officers never intended to mislead this Court and that they tender apology.

8. Paragraph 5 of the affidavits of both the officers filed today is identical. Paragraph 5 of the affidavit of Shri S.K.Padavi, Superintendent of Police, reads thus:

> "5. I say that as of to-day the prosecution is on the verge of deciding as to whether to rope in the applicant as an accused or not and therefore, **the prosecution is prepared to today concede to grant a notice before arrest of 72 hours to the Applicants before effecting arrest of the Applicant."** (Emphasis supplied)

I have noted the aforesaid aspects only to bring on record the manner in which the Officers have proceeded.

9. In view of the concession recorded in the said affidavit that the prosecution is prepared to give advance notice of 72 hours to the Applicants before effecting arrest, it is not necessary to consider the merits of these Applications. At this stage the learned Counsel for the Applicants pointed out that if Court holidays intervene in the period of 72 hours notice, the Court holidays should be excluded while computing the period of 72 hours. The learned Special Public Prosecutor has accepted the said suggestion made by the learned Counsel for the Applicant.

10. In view of this position, the Applications are disposed of by directing that in the event of the prosecution deciding to arrest the Applicants in all the three Applications, 72 hours advance notice (excluding public and Court holidays) will be given to the Applicants. It is clarified that Court holidays will not include summer, Diwali and X-mas vacations.

11. At this stage Shri Pradhan appearing for the Applicants prays that the Investigating Agency has taken over custody of the Cell Phones of the Applicants and the State may be directed to return the Cell Phones to the Applicants. However, the said relief cannot be granted in these applications and it is for the Applicants to take appropriate proceedings in that behalf.

12. Parties to act on an authenticated copy of this order.

Judge.